IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

S.B. Civil Writ Petition No.937/98
Mahmood Vs. The Board of Revenue & Ors.

Date of Order :: 2nd January, 2007

***Hon'ble Mr. Justice Mohammad Rafiq***

Mr. G.K. Garg, Advocate for petitioner.
Mr. K.K. Mehrishi for respondent no.4
Mr. B.S. Chhaba, Dy. G.A.

The petitioner in this writ petition has challenged the order dated 25.8.1992 passed by District Collector, Kota and the order dated 6.11.1997 passed by Board of Revenue, Ajmer. The Tehsildar Ladpura, District Kota by his order dated 4.2.1992 directed that a way shall be provided to the respondents no. 4 to 8 through and adjoining the land of Khasra nos. 163 & 168 of Village Motipura

leading to khasra no.166, 167, 168 and 171 as there was no way of ingress on the border of the revenue land of the private respondents in khasra no.163, 166. The way was provided for carrying tractors, bullock-carts etc. The petitioner aggrieved thereby filed an appeal before the District Collector who by his order dated 25.8.92 rejected the appeal thereby upholding the order passed by the Tehsildar. These two orders were challenged by the petitioner by filing a further appeal before the Board of Revenue under Section 230 of the Rajasthan Tenancy Act, 1955.

I have heard Shri G.K. Garg, the learned counsel for the petitioner and Shri K.K. Mehrishi, learned counsel for the respondent.

Shri G.K. Garg, the learned counsel for the petitioner argued that basic order passed by the Tehsildar was order dated 4.2.92. The Tehsildar Ladpura while passing the said order did not provide an opportunity of hearing to the petitioner in as much as the petitioner was not allowed to state and substantiate his case. There is no finding with regard to pre-existing right of way which is condition precedent for providing way with reference to Section 251 of the Rajasthan Tenancy Act. He argued that when the matter was pending with the Tehsildar, an application was moved by the petitioner seeking transfer of the case from the said Tehsildar to some other officer because he was biased against the petitioner. In spite of such

request, the Tehsildar proceeded to hear and decide the matter even before the transfer application could be decided. The Tehsildar in doing so ignored the earlier order passed by the Civil Court regarding the same right of way claimed by the private respondents. The application filed u/s. 251 of the Rajasthan Tenancy Act, even otherwise, was therefore barred by the principles of resjudicata.

On the other hand Shri K.K. Mehrishi, the learned counsel for the respondent argued that inquiry in regard to pre-existing right of way has already been made by the Tehsildar when he passed the earlier order dated 22.8.87. The petitioner has challenged the said order before the District Collector who by his

order dated 9.4.90 remanded the matter back to the Tehsildar on the limited ground that it is the Gram Panchayat who as per the provisions of Section 251 has the first right to adjudicate upon the dispute. The Tehsildar while passing the order has apart from examining the record has also inspected the site of the dispute. As regards the filing of the earlier Civil Suit, it has been submitted that the suit has been dismissed only on the ground that Civil Court did not have the jurisdiction to decide this nature of dispute. Shri Mehrishi further referred to order dated 3.8.1996 passed by Assistant Collector on the application filed by the petitioner u/s. 212 of the Rajasthan Tenancy Act which was dismissed with the observation that the petitioner,

if he wanted, could file a regular suit. The impugned order has mainly ordered restoration of the way of the respondents. The application for recalling the order dated 22.9.87 was also dismissed by Tehsildar on 2.4.88. When however the petitioner further filed appeal, the matter was remanded by the District Collector vide order dated 9.4.90 with a direction that if the private respondents wanted, they should approach the Gram Panchayat in accordance with law. The matter was thereafter taken up before the Gram Panchayat but the same was not decided by the Gram Panchayat within 45 days as required by Section 251 and the notification dated 4.9.82. The Tehsildar therefore did not commit any error of law in restoring the way of the

petitioner, as the matter would then be decided by Telsildar alone. He therefore submits that the learned Revenue Appellate Authority and the learned Board of Revenue did not commit any error of law so as to warrant interference by this Court.

In the present matter, it appears that the order passed by the Tehsildar was subjected to challenge in appeal before District Collector, Kota. Grievance in the argument raised by the learned counsel for the petitioner was that it is the Gram Panchayat who has the first right to adjudicate upon the dispute. Gram Panchayat having not been approached, the Tehsildar could not adjudicate upon and decide the matter of his own. It was therefore that the matter

was remanded by the Collector with that specific direction. The State of Rajasthan in exercise of its powers conferred u/s 260(b) of the Rajasthan Land Revenue Act, 1956 issued a notification dated 4.9.82 thereby conferred the jurisdiction upon the Gram Panchayat of the area concerned to decide the application under Section 251 of the Rajasthan Tenancy Act. It was however provided that in case such application was not decided by the Gram Panchayat within 45 days from the date of receipt thereof, the Tehsildar would be free to decide the same. In the present case when the Gram Panchayat failed to dispose of the application of the respondents within 45 days the Tehsildar has proceeded to decide it and that is order which has

been upheld by them by the Revenue Appellate Authority and the learned Board of Revenue. So far as filing of the Civil Suit by the petitioner is concerned it has already been clarified by the private respondents that the Civil Suit was dismissed only on the ground that such dispute could be raised only before Revenue Court. It cannot be considered as meaning any resjudicata as to the maintainability of the subsequent application under Section 251. Having examined the orders impugned, I do not find that all or any of these orders suffer from any legal error, much less an error apparent on the face of the record, so as to warrant interference by this Court in exercise of its powers under Article 227 of the Constitution of India.

The writ petition is therefore dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-